IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9179 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAKASHBHAI PANCHABHAI PARMAR

Versus

DIST HEALTH OFFICER

Appearance:

1. Special Civil Application No. 9179 of 2000

MR DC SEJPAL for Petitioner No. 1

MR PJ KANABAR for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 01/10/2004

ORAL JUDGEMENT

In this petition, the petitioner has challenged the legality of the award dated 25.4.2000, by which the Reference of the petitioner workman was rejected by the Labour Court, Amreli. It is the case of the petitioner that though admittedly he had worked as a Peon from

1.2.1988 to 12.5.1992, his services were terminated without following any procedure. He therefore, submits that the termination is in violation of Section 25F of the Industrial Disputes Act.

2. The Labour Court, after considering the evidence on record, came to the conclusion that the workman has failed to prove that his services are terminated illegally.

3. Quite apart from reasoning given by the Labour Court in its impugned award, what I find is that by written order dated 1.4.1988 the petitioner was put to notice that he is being engaged on purely adhoc and temporary basis until regular Peon is available and that his services will be terminated at any time without giving any notice, or can be terminated upon a regular Peon being available. In view of this stipulation in the order dated 1.4.1988, the case of the petitioner would not be governed by the provisions of Section 25F of the Industrial Disputes Act, since the termination of the petitioner was on account of availability of regular Peon and consequently the case would be governed under the exception clause of Section 2(oo)(bb) of the Industrial Disputes Act, and the termination would not therefore amount to retrenchment. On this short ground alone the termination of the petitioner cannot be upset. The award of the Labour Court, which has upheld such termination therefore, cannot be interfered with.

4. The Counsel for the petitioner has however submitted that subsequently once again the post of Peon had fallen vacant, but is being looked after by other person and the petitioner is not given the work of Peon even on adhoc basis. The learned Counsel for the respondents has fairly stated that if the Court makes suitable observations, the respondents shall comply with the same in true spirit. In view of this discussion, I find that the petitioner should not suffer on account of the present litigation and if the post of Peon is now vacant, the claim of the petitioner for being engaged on adhoc basis cannot be ignored on the ground of the petitioner having approached the Court of law. I am sure that if the petitioner approaches the respondent authority for being engaged on adhoc basis awaiting regular appointment to the post of Peon, the respondents shall consider his candidature in accordance with law.

With these observations, the petition stands disposed of. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

*/Mohandas